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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

A Delaware corporation, whose charter was voided for failure to pay annual fees, has been held to have power, under the Delaware statutes, to reorganize under the Federal Bankruptcy Act, while a Michigan corporation, whose charter was voided for a similar reason, was ruled to be without power, under the Michigan laws, to reorganize under the Federal Bankruptcy Act. Both decisions were by Federal courts. (See pages 127 and 128.)

The Maryland provision relating to merger and consolidation requiring the filing of a petition by a dissenting stockholder for appraisal of stock within thirty days after written demand, has been strictly construed. (See page 128.)

The Florida Chain Store Tax has been held not to apply to a wholesaler. (See page 131.)

Raymond Sherman

President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for March

What Constitutes Doing Business*

Holding Companies

When a holding company becomes active in a state other than that in which it is incorporated, the question frequently arises as to whether it is obliged to be licensed to do business in the foreign state and whether it is subject to the payment of annual taxes.

In *Cheney Brothers Company et al. v. Commonwealth of Massachusetts, (Copper Range Company)*, 246 U. S. 147, 38 S. Ct. 295, decided in 1914, the Supreme Court of the United States said:

"This is a Michigan corporation whose articles of association contemplate that it shall have an office in Boston. It is a holding company and owns various corporate stocks and bonds and certain mineral lands in Michigan. Its activities in Massachusetts consist in holding stockholders' and directors' meetings, keeping corporate records and financial books of account, receiving monthly dividends from its holdings of stock, depositing the money in Boston banks and paying the same out, less salaries and expenses, as dividends to its stockholders three or four times a year. The exaction of a tax for the exercise of such corporate faculties is within the power of the State. Interstate commerce is not affected."

In a State of Washington decision in which a foreign holding company sought to restrain the collection of a penalty alleged to have been incurred by reason of the corporation's failure to qualify, the corporation owned no property in Washington but was the owner of more than 51 per cent. of two state banks and two national banks domiciled within the State of Washington. It maintained no office in that state. The Supreme Court of Washington, in affirming a judgment which denied the relief sought, to restrain the collection of the penalty, observed:

"We do not hold that isolated transactions, whether commercial or otherwise, performed in this state by a foreign corporation constitute doing business within this state. But we do hold that, where a foreign corporation is formed for a particular purpose, to wit, acquiring, owning, and voting a majority of the corporate stock of other banking institutions, and comes into this state and carries out the very purposes and objects for which it was created, it is 'doing business' within this state." (*Bankers' Holding Corporation v. Maybury, Director of Licenses, et al.*, (1931) 297 Pac. 740.)

Decisions in other states in which the same conclusion was reached in connection with similar facts are *Colonial Trust Co. v. Montello Brick Works*, 172 Fed. 310 and *State ex rel. City of St. Louis et al. v. Public Service Commission of Missouri et al.*, 56 S. W. 2d 398.

However, as pointed out in *Toledo Traction, Light & Power Co. v. Smith et al.*, 205 Fed. 643, "it is not every act done by a corporation and an exercise of its corporate powers that amounts to 'transacting business' or 'doing business'" within the terms of the qualification statutes. In that case it was ruled that there was nothing in the Ohio licensing provisions which would have prevented the plaintiff corporation "from exercising the right of a stockholder to vote stock or to assent to change in regulations."

** This is one of a series of articles on What Constitutes Doing Business. See page 142 for a list of pamphlets obtainable on this important subject.*

Domestic Corporations

Delaware.

Supreme Court of Delaware dismisses bill of complaint in action seeking to have declared void as to complainants, a merger of Delaware parent and subsidiary companies where accrued dividends upon complainants shares of parent company preferred stock remained unpaid. In *Havender et al. v. Federal United Corporation*, 2 A. 2d 143, (The Corporation Journal, October, 1938, page 222), the former Chancellor ruled that the merger of a corporation with a wholly owned subsidiary, having as its purpose the elimination of accumulated preferred stock dividends of the parent company, was invalid as to objecting preferred stockholders. In a superseding opinion, reported at 6 A. 2d 618, (The Corporation Journal, October, 1939, page 6), the present Chancellor granted an injunction against the payment of dividends by the parent company until the accumulated dividends on the preferred stock of the objecting stockholders had been paid. Upon appeal to the Supreme Court of Delaware, that court, after a consideration of Sections 59 and 59A, and reaching a conclusion that "a merger of a parent corporation with a subsidiary wholly owned by it is within the purview of Section 59 of the Corporation Law," continued: "Next to be considered is whether, under the merger and consolidation provisions of the General Corporation Law, and apart from those provisions with respect to a valuation of stock either by agreement or by appraisal, dividends accumulated on the cumulative preference stock of one or more of the constituent companies may be disposed of other than by paying to the dissatisfied shareholder the amount of them in money. Neither of the learned Chancellors below thought it necessary to consider the question. In their view, the corporate proceeding complained of, while styled a merger, was no more than an unauthorized attempt at a recapitalization of the defendant corporation, ineffective, as against objection, to extinguish accumulated dividends on preference stock within the rule announced by this Court in Keller v. Wilson & Co., Inc., — Del. Ch. —, 190 A. 115." The court dismissed the bill of complaint. While indicating that the record disclosed that complainants were not entitled to relief because they were guilty of laches, the court also indicated that under the statutes providing for the merger of corporations, no recovery was to be had. The court noted a clear distinction between the provisions for amendment and those for merger and observed: "We think that the strictness of view of the merger provisions of the law entertained by the learned Chancellors below was perhaps, induced by overlooking the distinction, so that it was assumed that to attempt to accomplish by merger that which could not be done by mere charter amendment, was a perversion of the statute in an effort to escape the reach of the decision in the Keller case. It is not suggested that the terms of the plan of merger were unfair or inequitable. We conclude, therefore, that the accumulations of dividends on the preference stock of the defendant corpo-

ration were lawfully compounded. The complainants were put to their election, either to demand payment in money of the value of their preferred shares as agreed upon, or as ascertained by an appraisement, or to accept the exchange of securities offered by the merger plan. No effort was made to agree upon a valuation of the shares, and no appraisement was sought. Manifestly, under the provisions of the statute, a valuation cannot be demanded now. The complainants must accept the terms of the merger agreement." *Havender et al. v. Federal United Corporation,* Supreme Court of Delaware, January 16, 1940. Commerce Clearing House Court Decisions Requisition No. 229484. Caleb S. Layton, Richards, Layton & Finger, of Wilmington, T. R. White, and White and Staples, of Philadelphia, Pa., for appellant. (Christopher L. Ward, Jr., of Wilmington, and Allen S. Hubbard, of Hughes, Richards, Hubbard and Ewing, of New York City; and Daniel O. Hastings and Caleb R. Layton 3d., of Hastings, Stockley, Duffy and Layton, of Wilmington, filed briefs as amici curiae). Hughes & Terry, of Dover, and Abraham L. Pomerantz, of New York City, for appellees.

Delaware corporation, whose charter was voided in 1932 for failure to pay annual fees, held to have power to reorganize under Federal Bankruptcy Act in 1938. The charter of a Delaware corporation had been forfeited on April 1, 1932, by proclamation for failure to pay annual license fees for two years. In May, 1938, after the expiration of the three year statutory period provided for the winding up of the affairs of a Delaware company, a voluntary petition for a corporate reorganization under Sec. 77B of the National Bankruptcy Act was filed in the District Court of the United States for the Northern District of Oklahoma, which approved the petition. An appeal was taken from an order appointing trustees. The Circuit Court of Appeals, Tenth Circuit, affirmed the judgment of the lower court, ruling that the Delaware statutes governing forfeiture for failure to pay fees, when read together "are entirely inconsistent with the theory that a corporation whose charter has been suspended or forfeited for the failure to pay fees is dead and that it has ceased to exist." This conclusion was based upon Delaware provisions for the extension, restoration, renewal, or revival of charters of corporations whose charters have been forfeited and for the validation, upon reinstatement, of acts performed by the corporation, its officers or agents, during the time when the charters are inoperative or void. The court said: "So long as a corporation may be reinstated by the payment of delinquent fees and have validated all of its acts that where done while its powers were suspended, the corporation is not dead. Its powers are only in suspension and reinstatement of its charter restores it to all of its powers and validates all of its acts, including the acts done while its charter was suspended. The corporation had power to institute this proceeding for its reorganization under Section 77B." *Watts et al. v. Liberty Royalties Corporation, et al.,* 106 F. 2d 941. Austin M. Cowan of Wichita, Kan., and Eugene O. Monnet of Tulsa, Oklahoma, (Royce H. Savage, Max Cohen and

Jack Paden of Tulsa, Oklahoma, on the brief), for appellants. A. Francis Porta of El Reno, Oklahoma, and O. L. Lupardus of Tulsa, Oklahoma, (Robert W. Raynolds of Tulsa, Oklahoma, and Stanley E. Toland of Iola, Kansas, on the brief), for appellees.

Maryland.

Statutory provision relating to merger and consolidation, requiring filing of petition by dissenting stockholder for appraisal of stock within thirty days after written demand, strictly construed. A Maryland corporation and a New York corporation were merged under an agreement of consolidation under the Maryland law, by which the New York company became the surviving corporation. The Maryland statutes provided that dissenting stockholders voting against the consolidation "may within twenty days after the agreement of consolidation or of merger * * * has been received for record by the State Tax Commission (but not afterwards), make upon the consolidated corporation or the corporation surviving the merger * * * written demand for the payment of his stock." Provision was also made for application by petition to a court of equity for the appointment of commissioners to appraise the stock, in the event of failure of the dissenting stockholder and the corporation to agree upon the fair value of the stock. Such petition was required to be made within thirty days after such written demand. The appellant trust company, a stockholder in the Maryland corporation, voting against the agreement mentioned, filed such a petition on February 27, 1939, for the appointment of commissioners to appraise its stock. The agreement of consolidation had been filed in Maryland on December 2, 1938. Written demand was made on December 13, 1938. Therefore, the petition for appraisal, being filed on February 27, 1939, was filed after the expiration of thirty days from the time of making the written demand. The Court of Appeals of Maryland ruled that the provisions of the statute should be strictly construed and that the thirty-day period must be regarded as a mandatory limitation. It therefore affirmed a decree dismissing the petition. *Roselle Park Trust Company v. Ward Baking Corporation, etc.*, Maryland Court of Appeals, November 28, 1939. Commerce Clearing House Court Decisions Requisition No. 227362. Harry J. Green (Weinberg, Sweeten & Green and George H. Dowell, on the brief), for appellant. Richard F. Cleveland and William A. Fisher, Jr., (Semmes, Bowen & Semmes, on the brief), for appellees.

Michigan.

Michigan corporation, whose charter was voided in 1935 for failure to pay fees and file reports, which had taken no steps to revive charter, held to be without power to reorganize under federal Bankruptcy Act. The United States District Court, W. D., Michigan, S. D., has ruled that a Michigan corporation, whose corporate existence was terminated in 1935 because of failure to pay statutory fees

and to file annual reports, which had made no attempt to revive its void charter, was without power to take steps to continue its corporate business by reorganization under Chapter X of the federal Bankruptcy Act, 11 U. S. C. A. Sec. 501 et seq. "In the reorganization proceedings," remarked the court, "it would seek to compel a considerable percentage of its creditors to submit to a plan of reorganization under which it would continue in business with substantially the same assets and ownership as at present and under the same or a changed corporate name. No such residuum of corporate power exists. It is not believed that Congress, by the enactment of Chapter X, intended to confer upon a corporation (whose charter had by its own nonfeasance become absolutely void, and whose sole remaining powers were those incident to winding up its affairs) the right to seek modification of the terms of its obligations and to continue business. Nothing in the statutes of Michigan or in the decisions construing them suggests any such remaining power." *In re Columbia Hotel Co. of Kalamazoo, Mich.*, 29 F. Supp. 848. Kim Sigler of Hastings, Mich., and Burritt Hamilton of Battle Creek, Mich., for debtor. Laurence W. Smith of Grand Rapids, Mich., for trustee. Stephen H. Wattles and Fox, Fox & Fox of Kalamazoo, Mich., for indenture trustee.

New Jersey.

Directors and stockholders held liable where judgment was obtained against corporation after distribution of corporate assets without formal dissolution. In 1928, defendant bus company sold its buses, franchise and equipment to another corporation for approximately $100,000. This amount was then distributed among defendant's stockholders without formal dissolution and without making provision for the payment of claims which might have been asserted by the complainant. Complainant was receiver for an insurance company which had insured defendant's buses. The insurance company had become defunct and the receiver had levied an assessment in 1933 and had later obtained a judgment against defendant company, and it was sought, in this action to hold the directors of defendant company liable as statutory trustees to pay the judgment and to establish the liability of the stockholders to the extent that they had received money on distribution by the directors. The Court of Chancery of New Jersey decreed that the directors were primarily liable, jointly and severally, to satisfy the judgment to the extent of the moneys which had passed through their hands and that the stockholders were secondarily liable to the extent of the moneys which they received. The court also ruled that the liability, as trustees, of those defendants who were directors was not governed by any statute of limitations, nor was the liability of those defendants who were only stockholders, as distributees, to pay back trust moneys unlawfully paid out, subject to any period of limitations. *Beatty v. Paterson-Garfield-Lodi Bus Co., Inc. et al.*, 9 A. 2d 686. Israel B. Greene of Newark, for complainant. Emil H. Block of Newark, for

defendant Frank Levenstein. Mendelsohn & Mendelsohn of Newark, for defendant David Kimmel. Albert H. Kreamer of Paterson, for remaining defendants.

Foreign Corporations

Arkansas.

Entering into contracts with Arkansas merchants, followed by exhibition of advertising films in local theatre, held doing intrastate business, even though films were manufactured outside of Arkansas. This was a suit brought by the state against a foreign corporation to recover a statutory penalty of $1,000 for doing intrastate business in Arkansas without being licensed as a foreign corporation. The Arkansas Supreme Court ruled that the business carried on was essentially intrastate under the following facts: The corporation, which maintained no office or place of business in Arkansas, had a soliciting agent in the state who solicited advertising contracts which were subject to approval in Texas. The contracts were with Arkansas merchants for the exhibition of films advertising their wares in a theatre in Arkansas. The films were manufactured outside of Arkansas and shipped to the theatre from Texas and were screened when the theatre received instructions from the corporation, after which they were returned to Texas. The merchants paid the corporation for manufacturing and screening the films and the company paid the theatre for exhibiting the films. The court regarded the manufacture and shipment of the films as incidental to the main purposes of the contracts which was the exhibition of the films in Arkansas and viewed the penalty as not being an interference with interstate commerce. *State, for use and benefit of Independence County v. Tad Screen Advertising Co.*, 133 S. W. 2d 1; Commerce Clearing House Court Decisions Requisition No. 225583. Preston W. Grace of Batesville, for appellant. Keaton, Wells & Johnston of Oklahoma City, Oklahoma, and Dene H. Coleman of Batesville, for appellee.

California.

Service of process upheld where made upon vice-president of foreign corporation having two distributors in state who assigned to corporation contracts for sale of goods shipped to them on consignment. In an action in which petitioner foreign corporation sought to have the lower court restrained from taking further proceedings in a suit against it there on the ground that it was not doing business in California at the time the cause of action arose, the corporation had two California distributors of its products to whom it consigned goods, to which it retained title and reserved the right to withdraw goods to fill orders or to replace parts. Contracts for the sale of the material were assigned by the distributors to the petitioner. Notes on account of deferred payments were taken in the distributor's name and endorsed to the petitioner as security,

collections being made by the distributor. The District Court of Appeal, First District, Division 1, held that the foreign corporation was doing business under these circumstances, so as to warrant the denial of a writ of prohibition to restrain further proceedings in the lower court. Service of process, which had been made upon a vice-president of the company, who was in the state attending a business convention, who also endeavored, while in the state, to effect a compromise or settlement of the suit in the lower court, was ruled to be proper service upon the company. *Thew Shovel Co. v. Superior Court in and for City and County of San Francisco,** 95 P. 2d 149. Dinkelspiel & Dinkelspiel of San Francisco, for petitioner. R. G. Partridge and Wallace O'Connell of San Francisco, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service**, California, page 313.

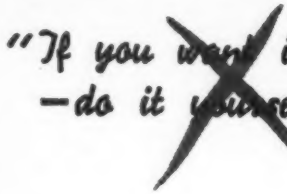
Service of process sustained where made upon agent having status of general manager of foreign corporation having vessels load and unload at California ports. Petitioner was a foreign corporation owning vessels which touched at California ports to unload and reload the whole or portions of their cargo. Service of process was made upon an agent of the company who held a power of attorney to represent it in matters before customs districts of the customs service and who acted for it with the public in connection with the entry and departure of such ships. The District Court of Appeal, First District, Division 1, regarded the company as actively "doing business in this state," and found the agent to be a general manager whose position was of sufficient character and rank to make it reasonably certain that the corporation would be apprised of the service of summons. A petition for a writ to restrain the lower court from proceeding further in the action in which the service of process had been effected was denied. *Socony-Vacuum Oil Co., Inc. v. Superior Court in and for City and County of San Francisco,** 94 P. 2d 1019. Harris F. Shaw of San Francisco, for petitioner. George K. Ford of San Francisco, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service**, California, page 312.

Taxation

Florida.

The Chain Store Tax held not to apply to a wholesaler. Appellee company, admitted to be a wholesaler and not a retailer, was held by the Supreme Court of Florida not to be subject to the chain store tax imposed upon retailers by Chapter 16848, Acts of 1935. The court pointed out that if the tax was to apply, an essential prerequisite was that activities as a retailer be shown. *Lee v. Smith, Richardson & Conroy, Inc.*, Supreme Court of Florida, December 8, 1939. Commerce Clearing House Court Decisions Requisition No. 227381. George Couper Gibbs, Attorney General, John L. Graham, Assistant



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Attorney General, Keen & Allen, J. Velma Keen, W. P. Allen and A. Frank O'Kelley, Jr., for appellant. Milam, McIlvaine & Milam, for appellee.*

* The full text of this opinion is printed in **The Corporation Tax Service, Florida, page 569-96.**

Michigan.

Use tax held valid by county court. Foreign corporation engaged in interstate transactions ruled not subject to use tax. Michigan resident bringing property into State held required to pay use tax. The Circuit Court, Wayne County, has ruled that the Michigan Use Tax, imposed by Act No. 94, P. A. 1937, is a valid tax which does not impose a direct burden on interstate commerce and that a foreign corporation, obtaining orders in Michigan, approved and executed in Illinois, followed by shipment from the latter state, was engaged in an interstate commerce transaction which could not be taxed by the State of Michigan. The court also held that a Michigan resident purchasing, in Canada, shoes of a value in excess of $10, which were brought into Michigan, was under obligation to pay the use tax. *J. B. Simpson, Inc. v. Gundry et al.,** Circuit Court, Wayne County, December 12, 1939. Commerce Clearing House Court Decisions Requisition No. 227130. *(Note: An appeal to the Supreme Court of Michigan has been filed in this case.)*

* The full text of this opinion is printed in **The Corporation Tax Service, Michigan, page 6408.**

Montana.

Prior Montana Chain Store Tax law held unconstitutional. The Supreme Court of Montana has ruled that the former Montana chain store tax law, enacted by Chapter 199, Laws 1937, is unconstitutional because of a defective enacting clause. The court reversed a decision of the District Court of First Judicial District, Lewis and Clark County of July 2, 1938, to the effect that the law was a valid legislative enactment. (The Corporation Journal, December, 1938, page 281.) *Vaughn & Ragsdale Company, Inc. v. State Board of Equalization et al.,** 96 P. 2d 420. John G. Brown and W. A. Brown of Helena, amici curiae. A. F. Lamey of Havre, and Johnston, Coleman & Jameson of Billings, for appellant. Harrison J. Freeborn, Atty. Gen., and John A. Matthews and Ralph J. Anderson, Asst. Attys. Gen., for respondents. (*Note:* The State Board of Equalization has indicated that "in any case where the tax was not paid under protest and suit started within the statutory time, sixty days, this Board could not make any refund. Where the tax was paid voluntarily the money passed into the general funds of the state and cannot be taken therefrom except by an appropriation of the Legislature.") (Montana CT Service, ¶ 7900.)

* The full text of this opinion is printed in **The Corporation Tax Service, Montana, page 7809.**

New York.

The Supreme Court of the United States rules that the New York City sales tax applies to sales effected by contracts entered into in city followed by shipment from another state and delivery within city. Respondent, a Pennsylvania corporation, with sales offices in New York City, entered into contracts in New York City for the sale of coal which was shipped by rail to Jersey City and thence by barge to the point of delivery in New York. It was conceded that the deliveries were subject to the New York City retail sales tax "except in so far as it infringes the commerce clause." The Supreme Court of the United States reversed the judgment of the Court of Appeals of New York, which had been to the effect that the city tax as applied to the transactions violated the commerce clause of the federal Constitution. In ruling that the sales tax could be applied, the Supreme Court said: "Here the tax is conditioned upon a local activity delivery of goods within the state upon their purchase for consumption. It is an activity which apart from its effect on the commerce, is subject to the state taxing power. The effect of the tax, even though measured by the sales price, as has been shown, neither discriminates against nor obstructs interstate commerce more than numerous other state taxes which have repeatedly been sustained as involving no prohibited regulation of interstate commerce." *McGoldrick, Comptroller of the City of New York, v. Berwind-White Coal Mining Company,** Supreme Court of the United States, January 29, 1940; Docket No. 475. Commerce Clearing House Court Decisions Requisition No. 230230; 60 S. Ct. 388. *Note:* Other cases involving the same tax and similar transactions, also decided January 29, on the authority of the *Berwind-White* case were: *McGoldrick, Comptroller, v. Felt & Tarrant Mfg. Co.,* (Docket No. 45), 60 S. Ct. 404; *McGoldrick, Comptroller, v. A. H. DuGrenier, Inc. et al.,* (Docket No. 474), 60 S. Ct. 404, and *Jagels v. Taylor,* (Docket No. 603), 60 S. Ct. 469.

* The full text of this opinion is printed in the CCH **U. S. Supreme Court Service, 1939-1940,** page 8455 and in **The Corporation Tax Service,** New York, page 5983-83.

Wisconsin.

Wisconsin Privilege Dividend Tax held unconstitutional as applied to foreign corporations. In 1936, the Supreme Court of Wisconsin ruled that the Privilege Dividend Tax was valid as applied to Wisconsin corporations in *State ex rel. Froedtert Grain & Malting Company, Inc. v. Tax Commission,* 265 N. W. 672, (The Corporation Journal, April, 1936, page 162). Upon denying rehearing in the same case, the court wrote an opinion, reported at 267 N. W. 52, (The Corporation Journal, June, 1936, page 208), in which it ruled that the tax was also valid as applied to foreign corporations, predicated upon the facts that briefs of amicus curiae had

been filed on behalf of a foreign corporation, although the original litigation involved only a Wisconsin company. On January 16, 1940, the Supreme Court of Wisconsin held the Privilege Dividend Tax invalid as applied to foreign corporations and indicated that the tax was to be regarded as valid as to Wisconsin companies. The court based its conclusion as to foreign corporations upon the reasoning that where a Delaware corporation operated stores in Wisconsin and elsewhere, and the company had its headquarters in New York, where dividends were declared and payments mailed and no act in connection with the payments of dividends was performed in Wisconsin other than the receipt of dividend payments by certain Wisconsin stockholders, there was no basis for an excise tax within the State of Wisconsin upon such a dividend and the transaction of declaring and receiving the dividend was not taxable in the state of Wisconsin. *J. C. Penney Co. v. Wisconsin Tax Commission,** Wisconsin Supreme Court, January 16, 1940. Commerce Clearing House Court Decisions Requisition No. 229370; 289 N. W. 677. (*Note:* The Department of Taxation, which administers this tax, has indicated, since this decision was rendered, that it regards the tax as still applicable to a foreign corporation having its principal place of business in Wisconsin.)

* The full text of this opinion is printed in **The Corporation Tax Service, Wisconsin, page 1955.**

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

MINNESOTA. Docket No. 500. *State of Minnesota v. National Tea Co. et al.*, 286 N. W. 360; affirming decision of District Court, Second Judicial District, Ramsey County, Minnesota, in *Hahn Department Stores, Inc. v. State of Minnesota*, (The Corporation Journal, January, 1938, page 86.) Constitutionality of prior Minnesota chain store tax imposed by Laws 1933, Ch. 213. **Appeal filed, November 3, 1939. Certiorari granted, December 11, 1939.**

NEW YORK. Docket No. 475. *McGoldrick, Comptroller of the City of New York v. Berwind-White Coal Mining Company*, 281 N. Y. (Mem.) 94. (The Corporation Journal, March, 1940, page 135.) Validity of New York City sales tax as applied to goods shipped into the state from a point outside the state. **Certiorari granted, December 4, 1939. Argued, January 2, 1940. Reversed, January 29, 1940.** (See page 135.)

NEW YORK. Docket No. 45. *McGoldrick, Comptroller of the City of New York v. Felt & Tarrant Mfg. Co.*, 4 N. Y. S. 2d 615; (The Corporation Journal, December, 1938, page 282), affirmed without opinion, New York Court of Appeals, 279 N. Y. 678, 18 N. E. 2d 311. Constitutionality of New York City sales tax as applied to shipments which may be in interstate commerce. **Appeal filed, May 8, 1939. Certiorari granted, June 5, 1939. Argued, January 2, 1940. Reversed and remanded, January 29, 1940.** (See page 135.)

* Data compiled from CCH **U. S. Supreme Court Service, 1939-1940.**

Regulations and Rulings

CALIFORNIA—The Attorney General of California has ruled that under the Neutrality Act of 1939, sales to foreign buyers are subject to the Retail Sales Tax Act as completed sales in California. (Full text of opinion in The California Corporation Tax (CT) Service, ¶ 64-521.) In another opinion, the Attorney General has indicated that sales to the state and its departments and political subdivisions are subject to the Retail Sales Tax Act and that the Act applies to sales made to the State Department of Unemployment. (California CT Service, ¶ 64-520.) In a third opinion, the Attorney General has informed the Director of the Department of Motor Vehicles that it is permissible for him to make a charge of $1 for the issuance of number plates in addition to the regular fees in connection with the registration and transfer of motor vehicles. (California CT Service, ¶ 59-525.)

INDIANA—The Gross Income Tax Division of the Department of Treasury has ruled that a foreign corporation is liable for the gross income tax as the result of its sale and installation of metal ceilings within Indiana. (Indiana CT, ¶ 15-011.)

MARYLAND—Regulations have been issued by the State Comptroller in connection with the Maryland Income Tax. (Maryland CT, ¶¶ 14-450 to 14-457, inclusive.)

NORTH DAKOTA—The opinion has been expressed by the Attorney General of North Dakota that "where a non-resident has an agent in this State for the purpose of taking orders for goods from samples shown, and the orders are later forwarded to the non-resident, who fills them by shipping goods into the State direct to the consumer, such non-resident is engaged in interstate commerce, and such transactions are not taxable under our sales tax law, and consequently, such agents would not have to have retailers' permits." (North Dakota CT, ¶ 7949.)

TENNESSEE—The Attorney General of Tennessee has rendered an opinion to the effect that a foreign corporation which has been awarded a contract by the Tennessee Valley Authority to dredge sand and gravel from the bed of the Tennessee River for use in the construction of a dam is required to qualify to do business in Tennessee and is also liable for the franchise and excise taxes. (Tennessee CT, ¶ .404.)

Some Important Matters for March and April

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Franchise Tax Return due between January 1 and March 15.—Domestic and Foreign Corporations.

Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due April 1, but may be paid without penalty until April 30.—Domestic and Foreign Corporations.

ARIZONA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement of Mining Companies due between January 1 and April 1.—Domestic and Foreign Corporations engaged in mining of any kind.

CALIFORNIA—Franchise (Income) Tax Return and Payment of one-half of tax due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

COLORADO—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Annual License Tax due on or before May 1.—Domestic and Foreign Corporations.

CONNECTICUT—Income Tax Return due on or before April 1.—Domestic and Foreign Corporations.

DELAWARE—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations making certain payments to citizens or residents of Delaware during 1939.

Annual Franchise Tax due after April 1 and before July 1. —Domestic Corporations.

DISTRICT OF COLUMBIA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.*

DOMINION OF CANADA—Income Tax Return due on or before April 30. —Domestic and Foreign Corporations.

GEORGIA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Intangible Property Tax Return due on or before March 15. —Domestic and Foreign Corporations.

IDAHO—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before April 15.—Domestic and Foreign Corporations.

IOWA—Income Tax Return and Returns of Information at the source due on or before March 31.—Domestic and Foreign Corporations.

Return of Taxes withheld at the source due on or before March 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

KANSAS—Annual Report and Franchise Tax due on or before March 31. —Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

KENTUCKY—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

MARYLAND—Annual Report due on or before March 15.—Domestic and Foreign Corporations.

Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Excise Tax Return due on or before April 10.— Domestic and Foreign Corporations.

MINNESOTA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.— Foreign Corporations.

* Will be changed to April 15 if H. R. 8237 is signed by the President.

MISSISSIPPI—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

MISSOURI—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

MONTANA—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Statement due within two months from April 1.—Foreign Corporations.

NEBRASKA—Statement to Tax Commissioner due on or before April 15.—Foreign Corporations.

NEVADA—Annual Statement of Business due not later than month of March.—Foreign Corporations.

NEW HAMPSHIRE—Annual Return due on or before April 1.—Domestic and Foreign Corporations.

Franchise Tax due on or before April 1.—Domestic Corporations.

NEW JERSEY—Franchise Tax Return and Tax due on or before May 15.—Domestic Corporations. (*Note:* Prior to 1940, the Return was due on or before the first Tuesday of February and the Tax was due, upon notice, in August.)

NEW MEXICO—Franchise Tax Return due on or before March 15.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before April 1.—Domestic and Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise (Income) Tax Return (Form 3 IT—Article 9A, Tax Law) due on or before May 15, together with one-half of tax.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Intangible Property Tax Return due on or before March 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before April 20.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Foreign Corporations.

OHIO—Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

Annual Statement of Proportion of Capital Stock due between January 1 and March 31.—Foreign Corporations.

OKLAHOMA—Income Tax Return due on or before March 15.—Domestic and Foreign Corporations.

OREGON—Excise (Income) Tax Return due on or before March 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Capital Stock Tax Report and Tax and Corporate Loans Report and Tax due on or before March 15.—Domestic Corporations.

Franchise Tax Report and Tax and Corporate Loans Tax Report and Tax due on or before March 15.—Foreign Corporations.

Bonus Tax Report due on or before March 15.—Domestic Corporations.

Bonus Tax Report due on or before March 15.—Foreign Corporations.

Income Tax Return due on or before April 15.—Domestic and Foreign Corporations.

RHODE ISLAND—Semi-Annual Report to Department of Labor due in April and October.—Domestic and Foreign Corporations employing five or more persons in Rhode Island.

SOUTH CAROLINA—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Income Tax Return and Returns of Information at the source due on or before March 30.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before May 1.—Domestic and Foreign Corporations.

UNITED STATES—Annual Return of Net Income due on or before March 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VERMONT—Extension of Certificate of Authority due on or before April 1.—Foreign Corporations.

Income (Franchise) Tax Return due on or before April 15.—Domestic and Foreign Corporations.

VIRGINIA—Income Tax Return and Returns of Information at the source due on or before April 15.—Domestic and Foreign Corporations.

WEST VIRGINIA—Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual License Tax Report due in April.—Foreign Corporations.

Quarterly Gross Sales Tax Return and Payment due on or before April 30.—Domestic and Foreign Corporations.

WISCONSIN—Income Tax Return and Returns of Information at the source due on or before March 15.—Domestic and Foreign Corporations.

Annual Report due between January 1 and April 1.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

What Constitutes Doing Business. (Revised to March 15, 1939.) A 184-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index make them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation—completely up-to-date as regards the most recent amendments.

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